

**STATE OF SOUTH CAROLINA**  
**IN THE SUPREME COURT**

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Certiorari to Spartanburg County  
Roger L. Couch, Circuit Court Judge

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2013-CP-42-00466

**Appellate Case No. 2015 - 001316**

**RECEIVED**

NOV 04 2015

**S.C. SUPREME COURT**

JOSE REYES AREVALOS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

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**PETITIONER'S *PRO SE JOHNSON* PETITION FOR WRIT OF CERTIORARI**

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Jose Reyes Arevalos  
#351024  
Lieber Correctional Inst. SB-41  
P.O. Box 205  
Ridgeville, SC 29472

**PETITIONER, *Pro se***

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## **ISSUES PRESENTED**

1. Whether PCR Counsel failed to inform Petitioner of the Petitioner's obligation to present witness whose testimony was relevant to substantiate the allegation on PCR.
2. Whether PCR Counsel failed to subpoena the translator who wrote Petitioner's statement and the translator at the plea proceeding to substantiate Petitioner's PCR allegations.

## STATEMENT OF THE CASE

On July 12, 2010, Petitioner appeared before the Honorable J. Durham Cole in Spartanburg County and pled guilty to accessory before the fact to burglary in the first degree and to two (2) counts of accessory after the fact of murder. Sentencing was delayed, (App. pp.1-28). On May 23,2012, Petitioner appeared before the Honorable J. Mark Hayes, II, and was sentenced to the consecutive respective sentences of thirty (30) years, fifteen (15) years and fifteen (15) years. Petitioner was represented by Patrick L. Mangram, Esq. The Solicitor was Barry Joe Barnette, Esq. (App. pp. 29-61).

Petitioner filed an application for post-conviction relief on January 29, 2013, (App. pp. 62-68). Respondent filed a Return dated March 29, 2014, (App. pp. 69-74). An Evidentiary hearing was convened on September 16, 2014, before the Honorable Roger L. Couch at the Spartanburg County Courthouse. Petitioner was present and was represented by J. Brandt Rucker, Esq. Respondent was represented by J. Clayton Mitchell, Assistant Attorney General. Both Petitioner and plea counsel testified at the hearing. (App. pp. 75-133) PCR counsel did not subpoena and Petitioner presented no witnesses.

On September 17, 2015, Robert M Pachak, Esq. of the South Carolina Appellate Defense filed a Johnson Petition for Writ of Certiorari and a Petition to be Relieved as Counsel.

This *Pro se Johnson* Petition seasonably follows:

## ARGUMENT

### **1. Whether PCR Counsel failed to inform Petitioner of an applicant's obligation to present witness whose testimony was relevant to substantiate the allegation on PCR.**

The Burden of proof at a PCR evidentiary hearing is on the applicant, *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1983) cert. denied; Rule 71.1(e), SCRCPP, to prove his allegations by a greater preponderance of the evidence, *Bannister v. State*, 333 S.C.298, 509S.E.2d 807 (1998), and is required to prove his claims through proof in accordance with the Rules of Evidence, *Id*, 333 S.C. at 303, 509 S.E.2d at 809-10.

To demonstrate prejudice from the failure to call a witness the applicant must provide competent evidence of the testimony the alleged witness would provide, *Id*. Failure to present such evidence at PCR means that the claim must fail.

Statements made during a guilty plea are generally considered conclusive unless the inmate presents reason why he should be allowed to depart from the truth of his statements, *see Edmonds v. Lewis*, 546 F2d 566(4thcir.).

Petitioner here was not fully informed of this procedural requirement where allegations of improper translations with the police translator and the plea hearing translator required by virtue of the allegations that both translators had to appear as witnesses at PCR in support of the claim.

Post-Conviction relief counsel failed to properly advise Petitioner regarding the burden of proof and presentation of witness at PCR or the claim would fail. The PCR

Court expressed concern and queried the nationalities of the translator and Petitioner and this counsel had a duty to Petitioner to ensure the presence of the witness(es) required by the allegations and evidence.

**2. Whether PCR Counsel failed to subpoena the translator who wrote Petitioner's statement and the translator at the plea proceeding to substantiate Petitioner's PCR allegations**

Trial counsel is required to investigate all available defenses before the Petitioner entered the guilty plea, *Cobbs v.State*, 305 S.C. 299,408 SE2d 223 (1991), specifically the nature and translation of the alleged statements by Petitioner. Trial counsel may have been shown to provide deficient representation by advising Petitioner to plead guilty without informing Petitioner that if he went to trial, he could have challenged the voluntaries of the statements, *See, e.g., Dupree v. State*, 305 S.C. 285, 408 S.E.2d 215 (1991).

Petitioner's conviction (plea) was obtained as a result of outrageous governmental misconduct, *see, e.g. United States v. Russell*, 411 U.S. 423 (1973), such as obtaining involuntary confessions, *See, e.g.,Rogers v. Richmond*, 365 U.S. 238 (1969),which was thus the product of the ineffective assistance of counsel, *see, Hill v. Lockhart*, 474 U.S. 52 (1985).

The Interpreter for Petitioner at the plea was Ruby Stephens. Judge Durham Cole noted she had "training and experience enabling her to speak fluently in the language of the defendant," App.5, even though the record indicates Ms. Stephens had difficulty keeping up, App. 4.

PCR Counsel Mangram testified that "even the interpreter had a tough time communicating," App.109, that "legal idioms and concepts do not translate well, "*Id.* Counsel admitted " there is a chance Petitioner" could not understand the whispered conversations" at the plea, App.115

Petitioner testified he told plea counsel “everything you know about these allegations,” App. 11, and whether Mr. Mangram and Petitioner “determine[d] whether or not you **have** a defense to any of the charges to which you’ve offered to plead guilty.” Id. Petitioner, an unschooled layman, testified that Mr. Mangram provided his own Interpreter (Marty Pollack) during attorney-client discussions, Id.

He further testified he informed counsel that he spoke with (cooperate)} with police officers, App. 81-82, which did include the statements made and the problems with the unnamed translator provided by the police.

Petitioner testified he did **not** have an attorney at the time he cooperated with police, Id., at the time of the statements, Id., and the issue with the police translator was that he was Puerto Rican and both had difficulty understanding one another, Id. and App. 87. A constitutional question presented itself as to whether or not the translator was actually an **employee** of the Sheriff’s Department, App.82.

Petitioner further testified that no one advised him that the statements could be used at trial against him, App. 82 and that to Petitioner’s knowledge, Mr. Mangram never investigated whether or not the translation was correct in the statements, Id.

Petitioner’s response at PCR regarding why he pled guilty was that they had nothing against him, App. 83, demonstrates even as late as PCR the Petitioner did not clearly understand the proceedings or the ramifications of his decision.

Petitioner testified that from his discussion with counsel that he “would not get a serious sentence, Id.,” “because he told me to sign and your sentence will be from zero to fifteen years and then you’re gonna be deported, Id.

Mr. Mangram testified at PCR that the Solicitor tried “to get it in the 15 year range, max 15 range”, App.96, which is what was communicated to Petitioner at the plea and which Petitioner believed he was signing.

Petitioner testified the Police Interpreter attempted to control the statements by instructing “this is not the way we say, we say it in Puerto Rico, we speak different.”

In any legal proceedings a person who cannot effectively communicate is entitled to the same benefits and protections of the law as anyone else, *See Rules of Professional Conduct For Court Interpreters*, South Carolina Appellate Court Rule S.E. 511; South Carolina Code of Laws 17-1-50; and *State v. Weldon*, 17 688 (S.C.1893); *Kuhtman v. Brown Goldsmith*, 38 s.c.l. (4 Rich.) 479 (1850).

Further, an Interpreter is to be considered a witness in a sense that the accuracy of his or her translation is a question of fact, *see, Perez*, 514 S.E.2d 754 (S.C. 1999) and *State v. Prente-Gomez*, 827 P2d 715 (Idaho 1992).

The foregoing demonstrates that PCR Counsel had a duty to subpoena the translators involved in this matter to support Petitioner’s allegations of an involuntary plea.

**CONCLUSION**

For the forgoing reason the writ should be granted.

Respectfully submitted,

October 27, 2015

*José Reyes Arc. Valdes*

Jose Reyes Arevalos  
# 351024  
Lieber Corr. Inst. Sb-41

October 27, 2015

The Honorable Daniel Shearouse  
Clerk  
Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, S.C. 29211

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**S.C. SUPREME COURT**

**RE:** *Jose Reyes Asevalos v. State of South Carolina*  
**Appellate case No. 2015 – 001316**

Dear Clerk:

Please find enclosed the Petitioner's pro se Johnson brief in the above reference petition for writ of certiorari.

Sincerely,

*Jose Reyes Arevalos*

Jose Reyes Asevalos  
Petitioner, pro se